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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,825	07/21/2003	Gudmundur G. Haraldsson	CONLINCO-8305	5723
72960	7590	11/29/2007	EXAMINER	
Casimir Jones, S.C. 440 Science Drive Suite 203 Madison, WI 53711			EBRAHIM, NABILA G	
			ART UNIT	PAPER NUMBER
			1618	
			MAIL DATE	DELIVERY MODE
			11/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/623,825	Applicant(s) HARALDSSON ET AL.	
	Examiner Nabila G. Ebrahim	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/4/07 ~~8~~.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of Applicant's remarks and amendments to the claims dated 9/4/07 is acknowledged.

Status of Claims

Claims 12-13 are pending in the application.

Claim 12 is amended to recite a content of less than 1% 8,10-octadecadienoic acid and less than 1% 11,13 octadecadienoic acid isomers since the instant disclosure does not support the amount of less than 2% recited previously in the claims.

Status of Office Action: Final.

Priority

In view of amending the claims, the denial of the priority date is withdrawn.

Specification

In view of amending the claims the objection to the specification is withdrawn.

Claim Rejections - 35 USC § 112

1. In view of the amendments to the claims the rejection of claim as having no antecedent bases for "less than 2% in the aggregate is herein withdrawn.

Claim Rejections - 35 USC § 102

In view of amending instant claims to be entitled to the priority date claimed by applicant the rejection under 35 U.S.C. 102(b) as being anticipated by J.L. Sebedio et al.

Geometry of conjugated double bonds of CLA isomers in a commercial mixture and in their hepatic 20:4 metabolites, Lipids, Volume 34, Number 12 / December, 1999, pages 1319-1325. (provided in the IDS dated 2/15/07 is herein withdrawn.

Claim Rejections - 35 USC § 103

In view of amending the claims and restoring the priority date of 03/1998 the rejection of Claims 12, and 13 under 35 U.S.C. 103(a) as being unpatentable over Cain WO 9718320 in view of R.O. Adlof et al., Changes in Conjugated Linoleic acid Composition Within Samples Obtained from a Single Source, Lipids, Vol. 36, no. 3, 2001, pages 315-317 is herein withdrawn.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a

terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

In light of new amendments to the claims, the claims are properly further rejected under double patenting in the current office action.

3. Claims 12 and 13 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7029691. Although the conflicting claims are not identical, they are not patentably distinct from each other because '691 claims biologically active acylglycerol composition comprising acylglycerol molecules wherein the acylglycerol molecules comprise substituents R.sub.1, R.sub.2, and R.sub.3 attached at the positions of the OH—groups of a glycerol backbone, and wherein R.sub.1, R.sub.2, and R.sub.3 are selected from the group consisting of a hydroxyl group and an octadecadienoic acid, said composition characterized in containing at least approximately 30% t10,c12 octadecadienoic acid, at least approximately 30% c9,t11 octadecadienoic acid, and about less than 1% total of 8,10 octadecadienoic acid, 11,13 octadecadienoic acid and trans—trans octadecadienoic acid at positions R.sub.1, R.sub.2, and R.sub.3. The molecules of the compound recited in '691 is the same as the compounds recited in the instant application and in the same ranges of amounts except for the amounts of 8,10 octadecadienoic acid, 11,13 octadecadienoic acid and trans—trans octadecadienoic acid which would have been obvious to one of ordinary skill in the art to prepare the same compounds having less than 2% of the 8,10 octadecadienoic acid, 11,13 octadecadienoic acid and trans—trans octadecadienoic acid.

4. Claims 12 and 13 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-3 of U.S. Patent No. US 6015833 ('833). Although the conflicting claims are not identical, they are not patentably distinct from each other because '833 teaches an isomerized linoleic acid composition

containing at least 50 percent conjugated linoleic acid said isomerized linoleic acid composition being characterized in having less than 1 percent of a class of octadecadienoic acid isomers selected from 11,13-octadecadienoic acid isomers, 8,10-octadecadienoic acid isomers and trans-trans octadecadienoic acid isomers.

Claims 12 and 13 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. US 6524527 ('527).

Although the conflicting claims are not identical, they are not patentably distinct from each other because '527 teaches nutritional bar comprising a conjugated linoleic acid component, said conjugated linoleic acid component containing less than 1% of the 8,10 and 11,13 isomers of conjugated linoleic acid. It is respectfully pointed out that a recitation of the intended use of the claimed invention in '527 must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish from each other. If the prior art structure is capable of performing the intended use, then it meets the claim.

Response to Arguments

5. Applicant's arguments, see amendments to the claims that excludes the amount of content of 8,10 and 1,13 octadecadienoic acids isomers of less than 2% in the aggregat and the arguments pages 2-4, filed 9/4/07, with respect to the rejection(s) of claim(s) 12 and 13 under 35 USC § 102 and 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the double patenting with patent 6015833 issued January 18, 2000.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nabila G. Ebrahim whose telephone number is 571-272-8151. The examiner can normally be reached on 8:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nabila Ebrahim
AU 1618



MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER